No. 76-314

In the Supreme Court of the United States

OCTOBER TERM, 1976

CARL ANTHONY WUCO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Petitioner claims that he has been convicted of an offense not charged in the indictment.

After a jury-waived trial in the United States District Court for the Central District of California, petitioner and a co-defendant were convicted of importing, and of possessing with intent to distribute, a controlled substance, in violation of 21 U.S.C. 841(a), 960(a)(1), and 952(a). Petitioner was sentenced to concurrent two-year terms of imprisonment (the first 90 days to be served in a jail-type institution and the balance suspended) and probation for three years (R. 53a). The court of appeals affirmed in an opinion upon which we chiefly rely (Pet. App. A).

As the court of appeals observed (Pet. App. 2), petitioner and his co-defendant "were caught red-handed with an

aircraft which contained [approximately 1,000 pounds of] marijuana shortly after it landed from a trip to Mexico." The first indictment returned against petitioner charged him with importation and possession of "marijuana," a Schedule I controlled substance (see 21 U.S.C. 812(c)(c)(10)). Petitioner indicated that he would assert that the marijuana in question was a different species from the marijuana covered by the statute, which is defined as "the plant Cannabis sativa L." (see 21 U.S.C. 802(15)). The government thereupon returned a superseding indictment charging importation and possession of "Tetrahydrocannabinols" ("THC"), also a Schedule I controlled substance (see 21 U.S.C. 812(c)(c)(17)). Although THC in its organic form is a natural constituent of marijuana (Tr. 278-313), the THC identified in Section 812(c)(c)(17) is actually the synthetic form of the substance (see 39 Fed. Reg. 22141-22142). Petitioner claims that there was no proof that he possessed synthetic THC, and that therefore his conviction should be reversed.

The court of appeals correctly disposed of this contention as follows (Pet. App. A2):

> [T]he government charged, sought to prove, and did prove that the substance imported was the organic THC contained in the 1,010 pounds of marijuana. While this was not the synthetic THC defined as a Schedule I controlled substance the government assumed it was, it would appear to be a substance denounced by 21 U.S.C. §802(15) as a "part" or "derivative" of the plant cannabis sativa L. as the terms were used by Congress.

In short, the indictment fully apprised petitioner of the charges against him and accurately described the crimes for which he has been convicted. The objections petitioner raises afford no basis for overturning his conviction.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

NOVEMBER 1976.